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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,353	04/25/2002	John Alfred Wilkinson	B0192/7033	1376

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/019,353

Applicant(s)

WILKINSON, JOHN ALFRED

Examiner

Neil Levy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/04/03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8, 9, 11-13, 19, 33, 73-93 is/are pending in the application.
- 4a) Of the above claim(s) 86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 9, 11-13, 19, 33, 73-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-4, 8, 9, 11-13, 19, 33, 73-93 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

Art Unit: 1616

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 86 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Claims 1-4, 8, 9, 11-17, 19, 33, 73, 74, 79, 80, 82-93 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not at all clear of the import of "based on" –please enlarge this limitation and/or explain. In claim 80-91, it is unclear if Aloe is the gel carrier of claim 75.

^{1-4, 8, 9, 11-17, 19, 33 + 73 - 93}
Claim** rejected under 35 U.S.C. 103(a) as being unpatentable over Elni et al EP 0495684 in view of Coats-4178372, Himmelstein et al WO 95/35093 or Precopio-5858383.

Essential oil of Salvia, sage, at 0.01-50% shown effective to treat people with head lice (p.2, ¶ 3 and summary) in gel form, p.7, lines 29-31. Lice Free Gel is shown as 2% essential oil, 1% carbomer; 47% water; antipruritic agents are evident: methyl lactate, triethanolamin (p.7-results).

Citrus is also shown, as Limonene, pinenes, terpinene, found in citrus, are also effective. All of the formulations are preparable in various formulations, solutions, gels cream (p.2, lines 49-55).

However, the polymethacrylate based gel, nor the aloe vera, was mentioned.

Art Unit: 1616

Coats has the celoe vera, shown as a hypoallergenic gel, while, Himmelstein show gel formation as adjustable by artisan to control active agent release (p.7), viscosity (p.16) see claim 2. The gel is based on glyceryl polymetharoylates and propylene glycol, in pharmaceutical composicions, inclusive of anti-parasitics-(claim 30).

Precipio shows gel formulations to control lice of aloevera gel, with gums, carbomers and the like (col.5, top, example 1).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a plant treatment to use any of art recognized means, including the essential oil an extracts Eini, in order to provide safe lice treatment, with the gel of coats, in order to reduce itching. The particular gel and formulation ingredients are all art recognized, and other than the advantageous hypoallergenic aloe, equivalents useful and within the purview of one of ordinary skill in the art to practice, as shown by secondary references.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed,

Art Unit: 1616

and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved lice control as is well known in the art.

Applicant's arguments filed 12/04/03 have been fully considered but they are not persuasive. Arguments have been considered, with some rejections withdrawn in response, but the amendment claims, re-searched, are seen as still non-obvious.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1616

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday from 7:00 a.m to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/tgd

February 25, 2004

NEIL S. LEVY
PRIMARY EXAMINER